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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1937

No. 367

ERIE RAILROAD COMPANY, PETITIONER,

vs.

HARRY J. TOMPKINS

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

PETITION FOR CERTIORARI FILED AUGUST 30, 1937.

CERTIORARI GRANTED OCTOBER 11, 1937.

SUPREME COURT OF THE UNITED STATES

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INDEX.

	Original	Print
Proceedings in U. S. C. C. A., Second Circuit	1	1
Statement under Rule XIII	1	1
Record from D. C. U. S., Southern New York	3	2
Summons	3	2
Complaint	4	2
Stipulation amending complaint	8	4
Notice of appearance	9	5
Answer	10	5
Subpœna (annexed to bill of discovery)	12	6
Bill of discovery (in equity)	13	7
Demand for bill of particulars	24	13
Plaintiff's bill of particulars	27	15
Statement of evidence	31	17
Caption	31	17
Testimony of Harry J. Tompkins	32	17
Wm. Colwell	102	80
Edward M. Harrington	133	106
Aloysius T. McHale	141	113
Wilbert Schultz	174	142
Ernest Cook	188	155
Harry J. Tompkins (recalled)	210	175

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[fol. 3] IN UNITED STATES DISTRICT COURT, SOUTHERN DISTRICT OF NEW YORK

L 58, Page 389

HARRY J. TOMPKINS

against

ERIE RAILROAD CO. (a New York Corporation),

SUMMONS

To the above-named Defendant:

You are hereby summoned to answer the complaint in this action, and to serve a copy of your answer, or, if the complaint is not served with this summons, to serve a notice of appearance on the plaintiff's attorney within twenty days after the service of this summons, exclusive of the day of service. In case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

Witness, the Honorable John C. Knox, Judge of the District Court of the United States for the Southern District of New York, at the City of New York, this 29th day of August A. D. 1934.

Charles Weiser, Clerk.

Bernard G. Nemeroff, Plaintiff's Attorney, Office and Post Office Address, 11 Broadway, Borough of Manhattan, City of New York.

[fol. 4] IN UNITED STATES DISTRICT COURT

[Title omitted]

COMPLAINT

Plaintiff, by his attorney Bernard G. Nemeroff, complains of the defendant and alleges as follows:

First. That this plaintiff is a citizen of the State of Pennsylvania and resides at 1125 Wyoming Avenue, Exeter, Pa.

Second. That at the times hereinafter mentioned, the defendant was and still is a domestic corporation, duly organized and existing under the laws of the State of New York and operating a steam railroad both in the State of New York and in the State of Pennsylvania, and that said corporation has its principal place of business in the Borough of Manhattan, City, County and State of New York.

Third. That on or about the 24th day of July, 1934, plaintiff was lawfully on a foot path near the intersection formed by Rock Street and a railroad track exclusively maintained by the defendant corporation in the Borough of Hughes- [fol. 5] town, City of Pittston, Luzerne County, Pennsylvania, and which said foot path runs parallel with and adjacent to said railroad track and said foot path furthermore has been for a long time prior to the said date herein used by the public as a means of egress and ingress to and from the streets abutting to and intersecting the said railroad track maintained by the said defendant, and that said use was with the full knowledge, consent and acquiescence of said defendant, and the proximity of said foot path to the said railroad tracks was fully known to the said defendant, its servants, agents, employees and others.

Fourth. That as plaintiff was on said foot path, the defendant, negligently, carelessly and recklessly and without heed to the safety of the public, ran one of its trains on said railroad track at a high and dangerous rate of speed and negligently, carelessly and recklessly omitted, while so operating said railroad train, and although approaching a crossing, to give any signal by ringing of the bell or blowing of the whistle of the locomotive of said railroad train, or otherwise, although defendant had no gates or any flag-men at said crossing, by reason whereof plaintiff was unaware of the approach of the said locomotive, and that said defendant carelessly, recklessly and negligently permitted an object to project from the said train, which was operated by said defendant.

Fifth. That by reason of the defendant's said negligence and without any fault or negligence on the part of the plaintiff, said plaintiff was struck with great force, hurled to the ground and underneath the wheels of said railroad train and thereby inflicting upon him serious injuries.

[fol. 6] Sixth. That by reason of the defendant's negligence, carelessness and recklessness as aforesaid, plaintiff was seriously wounded, bruised and injured and suffered severe wounds and cuts in his head and face, resulting in his having severe scars thereon and permanently disfiguring his face and head; and also suffered severe wounds and cuts on his thigh, hip, legs and feet; he also suffered the amputation of his right arm at its junction with the shoulder and was severely injured and bruised in and about his body, with the result that he has ever since been incapacitated and caused to suffer great pain of body and mind and suffer severe mental and nervous shock and, as plaintiff is informed and verily believes, his injuries as aforesaid will be permanent and he will be permanently disabled and caused to suffer continuous pain, humiliation and inconvenience, and ever since said injuries, the plaintiff has been and will be permanently prevented from attending to his usual vocation and plaintiff's earning capacity has been permanently impaired; and the plaintiff has necessarily paid and has become liable to pay expenses for medical and surgical attendance and for nursing and for medicines and will hereafter necessarily incur further expenses of a similar character, all to the plaintiff's damage in the sum of $100,000.

Wherefore plaintiff demands judgment in the sum of $100,000 with the costs and disbursements of this action.

Bernard G. Nemeroff, Attorney for Plaintiff, Office & P. O. Address, 11 Broadway, Borough of Manhattan, City of New York.

[fol. 7] *Duly sworn to by Bernard G. Nemeroff. Jurat omitted in printing.*

[fol. 8] IN UNITED STATES DISTRICT COURT

[Title omitted]

STIPULATION AMENDING COMPLAINT

It is hereby stipulated and agreed by and between the attorneys for the respective parties hereto as follows:

1. That paragraph "Third" of the complaint herein, the first line thereof, be amended to read as follows: "That on or about the 27th day of July, 1934."